

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MCMILLAN DATA  
COMMUNICATIONS, INC.,

Plaintiff,

v.

AMERICOM AUTOMATION  
SERVICES, INC., TRACI PELAYO,  
JUSTIN L. PELAYO,

Defendants.

Case No. [14-cv-03127-JD](#) (NC)

**ORDER TO SHOW CAUSE**

Re: Dkt. No. 27

Plaintiff McMillan Data Communciations seeks to collect money that it claims it is owed from defendants AmeriCom Automation Services, Traci Pelayo, and Justin L. Pelayo, in connection with three documents: a subcontract to renovate a federal building in San Francisco, a personal guarantee for that contract, and a subsequent promissory note for the debt incurred under the subcontract. McMillan filed suit with the district court on July 10, 2014, alleging breach of contract claims. Dkt. No. 1. None of the defendants appeared, and the clerk entered default against AmeriCom on August 19, 2014, Dkt. No. 17, and against Traci Pelayo and Justin Pelayo on August 28, 2014, Dkt. No. 23. On October 24, 2014, McMillan moved for default judgment. Dkt. No. 27.

**I. Debt Owed**

McMillan claims that \$308,459.40 of its total work invoice remains unpaid. Dkt.

No. 1 at 17. The sum of McMillan's requested damages, however, totals \$918,792.05: \$308,459.40 from AmeriCom, \$308,459.40 from Traci Pelayo, and \$301,873.25 from Justin Pelayo (excluding prejudgment interest and attorney's fees and costs).

Because of the apparent discrepancy between established debt and damages requested, the Court orders McMillan to show cause why it is entitled to triple the amount owed. Financial relief sought on default judgment is more likely to be considered reasonable if "the operative purchase order supports [the relief requested]." *Triumph Furniture Processings-Export Joint Stock Co. v. Everest Furniture Co.*, No. 13-cv-07129 NC, 2013 U.S. Dist. WL 9600372, at \*5 (N.D. Cal. Aug. 29, 2013) (granting requested damages because purchase order receipt supported the figure). Here, an award of \$918,792.05 based on a maximum remaining debt of \$308,459.40 would appear to result in a windfall.

## **II. Attorney's Fees**

Additionally, McMillan requests \$37,961.00 in attorney's fees and costs under the subcontract and the promissory note, though the cost of pursuing this action was \$18,980.50. Dkt. No. 27-1 at 21-22, Dkt. No. 27-4 at 4. This also appears to be a windfall. Accordingly, the Court orders McMillan to show cause why it is entitled to double its attorney's fees.

## **III. Novation**

Finally, McMillan must show cause why the promissory note issued by Justin Pelayo and AmeriCom has not superseded prior payment agreements, including the subcontract with AmeriCom and the personal guarantee signed by Traci Pelayo. *See Fanucchi & Limi Farms v. United Agri Products*, 414 F.3d 1075, 1084-85 (2005) (finding novation where differences between new and old contract were drastically different and parties' conduct indicated extinguishment and replacement of old contract); *Alexander v. Angel*, 37 Cal. 2d 856, 861 (1951) (finding novation and not "mere assumption of a preexisting obligation" where new contract had "entirely different method of payment," and added interest payment and acceleration clauses).

1 Indeed, if the Court finds that the AmeriCom subcontract and Traci's personal  
2 guarantee were novated, it would only grant default judgment in part against Justin Pelayo  
3 and AmeriCom in the amount of \$301,873.25 in damages, \$18,980.50 in attorney's fees  
4 and costs, and \$19,998.07 in prejudgment interest, for a total judgment of \$340,851.82. If  
5 McMillan believes the Court should hold AmeriCom (under the subcontract) or Traci  
6 Pelayo (under the guarantee) liable with Justin Pelayo and AmeriCom (under the  
7 promissory note) for a certain amount, it must explain why and provide legal support.

8 McMillan must file its response to this order within 14 days. The response must not  
9 exceed 15 pages.

10 **IT IS SO ORDERED.**

11 Dated: June 3, 2015

  
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NATHANAEL M. COUSINS  
United States Magistrate Judge

United States District Court  
Northern District of California